

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1594 OF 2005

Yadunarayan M. Shetty ...Applicant

Versus

Mrs. Kokilaben & Anr ...Respondents

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Mr. D.G. Bagwe, Advocate for Applicant.

Mr. Girish B. Kedia, Adv.for Respondent No.1.

Mr. U.V.Nikam, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 17TH OCTOBER, 2005

P. C.:-

1. Heard the learned advocate for the applicant, learned advocate for the respondent No.1. i.e. original complainant and the learned A.P.P. for the State.

2. The applicant has prayed for quashing of process issued against him in Criminal Case No.486/2003 which is pending in the Court of learned M.M. 20th Court, Mazgaon, Mumbai. In the said case, process has been issued against the applicant under Section 138 of Negotiable Instruments Act.

3. The learned advocate for the applicant states

that the applicant had preferred an application before the learned Magistrate for recall of process. The said application came to be rejected. Being aggrieved by the said order, the applicant had preferred revision before the Sessions Court. After filing the revision the applicant was of the opinion that in view of the decision of the Supreme Court in the case of **Adalat Prasad Vs Rooplal Jindal & Ors. reported in (2004) 7 SCC 338**, the only remedy available to the applicant would be to file an application before the High Court under Section 482 of Cr.P.C., hence, the said revision came to be withdrawn and the present application has been preferred.

4. As far as the order of the Magistrate rejecting the application for recall of process is concerned, in view of the decision of the Supreme Court in the case of Adalat Prasad (supra), it is clear that the Magistrate has no power to recall the process, hence, I am not inclined to interfere with the order of the Magistrate rejecting the said application for recall of process.

5. However, for the reasons recorded in the decision of this Court in the case of **V.K. Jain & Ors. Vs. Pratap Vs. Padode and Anr, reported in 2005(3) Mh.L.J. 778**, in my opinion, the applicant has an

efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the applicant prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

6. Liberty is granted to the applicant to prefer revision before the concerned Sessions Court. The learned advocate for the applicant states that the necessary revision would be preferred within a period of six weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of six weeks from today. The learned advocate for the respondent i.e. original complainant fairly states that no objection would be raised in respect of delay in filing revision before the learned Sessions Judge. The learned advocate for the applicant states that four days advance notice shall be given to the original complainant in respect of filing revision before the learned Sessions Judge.

7. On the necessary revision being preferred by the applicant before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

8. It is made clear that the revision shall be preferred in respect of the order of the Magistrate

issuing process and not in respect of the order of the Magistrate rejecting the application for recall of process.

9. Application is disposed of.

10. Office to issue an authenticated copy of this order to the parties.

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